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July 29, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: CS Docket No. 94-48; Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming

Dear Mr. Caton:

On behalf of Consumer Satellite Systems, Inc., Programmers Clearing House, Inc., and Satellite Receivers, Ltd. please accept the attached original Reply Comments and ten (10) copies for filing in the Notice of Inquiry issued in the identified above Docket.

Very truly yours,

Mark C. Ellison

Enclosures

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF SECRETARY

In The Matter Of:	)	
	)	
Implementation Section 19 of the Cable Television Consumer Protection and Competition Act of 1992	)	CS Docket No. 94-48
	)	
Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming	)	

REPLY COMMENTS OF CONSUMER SATELLITE SYSTEMS, INC., PROGRAMMERS CLEARING HOUSE, INC. AND SATELLITE RECEIVERS, LTD.

Consumer Satellite Systems, Inc., Programmers Clearing House, Inc., and Satellite Receivers, Ltd. (hereinafter the "Packagers") hereby submit the following Reply Comments in the above styled proceeding.

Whether or not history will view the 1992 Cable Act as a success depends in large part upon the Commission. The 1992 Act, in and of itself, has done little to change the competitive picture for the distribution of video programming. The canvas has been provided and now the Commission must complete the picture.

In the nine months since the Act became effective, the Packagers have realized very few substantive benefits in terms of programming pricing. Since the onset of scrambling in 1986, the Packagers and other independent home satellite dish ("HSD") distributors have been treated as poor stepchildren in the video distribution market. Slowly, over the years, these companies, which founded the home satellite business, have gained access to programming, enabling them to serve the customer base they created. Access to programming is not, generally, a problem. The primary problem is PRICING.

Very few of the Comments filed in this proceeding address the question of rate parity among different delivery technologies. One party addressing this point was Turner Broadcasting System, Inc. ("TBS"). We use TBS as an example of what is happening in this market and how unfair the pricing for HSD is with respect to some programming vendors.

In its Comments, TBS states that it "now offers a technology-neutral contract with no difference in the rates offered to cable, SMATV and MMDS systems." Unfortunately, HSD pricing is not among the technologies enjoying such equality of treatment. Instead, TBS contends that the HSD rates must be higher due to higher costs of delivery. TBS states the following:

> With respect to home satellite distributors, TBS has also substantially lowered its license fee from the levels charged prior the passage of the 1992 Act. TBS bears the expense of delivering the services to homes and providing security and sales support for the services, i.e., providing encoder, the authorization center and tier bit fees, the home satellite rates reflect those cost [sic].

The facts are these: TBS did provide a reduction in HSD pricing following the passage of the 1992 Act. Its rates fell approximately 35% from pre-1992 Act levels.

However, the TBS HSD pricing remains more than two times the <u>top</u> of the rate card for all other technologies. Is this differential justified, as TBS claims? We believe the answer to that question is no.

If the cable/SMATV/MMDS rate for CNN and Headline News is assumed to be $0.38 per subscriber per month and if, conservatively, the HSD rate is assumed to be double that rate ($0.76)[1] the "HSD Premium" is, obviously, $0.38 per HSD subscriber per month. There are about 1.8 million authorized HSD subscribers in the United States. If one assumes that CNN and Headline News penetrate 1 million[2] of those households, TBS is deriving at least $760,000 per month from the HSD market. Of that amount, $380,000 per month or $4,560,000 per year constitutes the HSD Premium which TBS claims it needs to cover the costs of serving this market. The Packagers contend that this amount is excessive.

Encoders involve one time cost of about $110,000. To make the system redundant (i.e., two encoders) TBS would have a capital cost of $220,000 in today's market. The authorization center and tier bit fees are currently being quoted by General instrument Corporation (which operates the DBS Center in San Diego, CA) at $4,600 per month. If the encoder costs are amortized over 120 months, the total TBS fixed costs for encoder and authorization center/tier bit is about $6,500 per month or $78,000 per year. As noted above, at 1 million HSD subscribers TBS enjoys HSD Premium revenue in excess of $4.5 million annually leaving the company about $4,422,000 to cover the additional costs of "providing security and sales support" to serve the HSD market. The Packagers submit that TBS does not incur such costs in serving the HSD market for the

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[1] Generally, the HSD rate for the Packagers is more than double the highest cable rate. The cable is based on data contained in Cable TV Programming Newsletter, April 30, 1993, for 1994 rates.

[2] The Packagers believe that the actual CNN - Headline News HSD penetration is actually much greater than 1 million households and may be closer to 1.5 million.

benefit of third party distributors. (TBS does operate its own direct to home marketing entity called Turner Home Satellite ("THS") which competes with the Packagers. Any costs associated with the operation of THS should not be allowed in justifying the HSD Premium.)

The questions: Does TBS not have some encoder, security and sales support expenses in the other markets it serves which are covered within the base rate of $0.38? If not, why aren't such costs assessed as premiums as they are in HSD sales. Does TBS expend anywhere near $4 million a year for HSD security and sales support? Of the amounts spent by TBS for marketing to the HSD market, how much is for its own direct sales conducted by THS, one of the industry's larger packagers?

The Packagers submit that most of the HSD premium dollars go to the TBS bottom line. The Packagers themselves are the ones who incur the vast majority of expense in serving the HSD market. As noted in their Comments, they advertise the services, do the telemarketing, exhibit at the trade shows, take the orders, handle the authorization and deauthorization of their subscribers (for which they incur their own DBS port expenses in an amount approximately equal to the TBS tier bit costs), and conduct the subscriber billing and collection. On a monthly basis the Packagers provide TBS with a statement of the number of subscribers and payment for those subscribers. Audits are not even necessary since the authorizations can be checked through a link to the DBS Center. TBS can serve the HSD market with small fraction of the HSD Premium. As with many other programmers, the costs imposed by TBS on this market are simply not justifiable.

TBS is not alone. The story is similar for superstation carriers such as United Video (WGN), Southern Satellite (WTBS) and a number of the satellite programming vendors which are charging an HSD Premium in multiples of two to five times the rates paid by cable and other technologies.

In their comments, the Packagers noted that some of the programming vendors have adopted cable rates for HSD (including Discovery, Country Music Television, The Nashville Network, MTV Services and the Family Channel). In addition to those referenced in the Comments, the service Encore appears to have adopted a non-discriminatory rate card. Further, the Packagers wish to correct information pertaining to Home Box Office. In their Comments the Packagers make reference to an estimated cable rate for Home Box Office ("HBO") of $4.00. HBO has advised the Packagers that its current top cable rate for the HBO service is $6.28. They advise that this rate is applicable to approximately twenty percent (20%) of their cable subscribers. Accordingly, the HSD rate for HBO is within a few cents of the top cable rate.

These basic and premium services have the same encoder, authorization center and tier bit fees, security costs and, presumably they have similar sales support costs as TBS and other programmers charging HSD Premiums, and yet they are able to serve the HSD market at or near the same rates charged to cable. How is it that some programming vendors find it economically feasible to operate in a non-discriminatory fashion while others contend that they must charge two, three, and four times the cable rate to serve the HSD market?

In every case where HSD is being charged a premium over and above the rates paid by other technologies in excess of a few cents per month, the Packagers contend that the premium is not justified. In those cases it is not a premium, it is either a penalty designed to protect competing distributors or it is simply a matter of profiteering. Either way, the status quo should not be acceptable to the Commission or to Congress. If the

HSD market is to continue its growth and become a competitive factor in the marketplace, the Commission must vigorously address and root out all excessive pricing. If the competitive playing field is to be leveled, the penalties and the profiteering in the sale of video programming to the HSD market must come to an end.

July 29, 1994

Respectfully submitted,
CONSUMER SATELLITE SYSTEMS, INC.
PROGRAMMERS CLEARING HOUSE, INC.
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